

REMARKS

The Office Action mailed August 19, 2004 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. The amendments made herein are fully supported by the Application as originally filed. No new matter has been added. Accordingly, reconsideration of the present Application in view of the above amendments and following remarks is respectfully requested.

CLAIM STATUS

Claims 1-11 are pending in this Application. By this Amendment, claims 7-11 have been amended, while new claims 12-14 have been added. The claims under consideration are, therefore, 1-14.

Claim Rejection Under 35 USC § 103

Claims 1-11 stand rejected under 35 USC § 103(a) as being unpatentable over Bock et al., US Patent No. 4,806,580 taken with Fukui et al., US Patent No. 5,100,930. This rejection is respectfully traversed.

In justifying its §103 rejection, the Office states:

Since Fukui et al. equates the antioxidant properties of the hindered phenols, tocopherols and phosphites, it would have been obvious to one of ordinary skill in the art at the time of applicants invention to incorporate the phosphate antioxidants of Fukui et al. into the stabilizer composition of Bock et al. with the expectation of achieving at least an additive effect in processing stability of polyolefin compositions. Applicant must show that he has achieved results of an unexpected nature by making such a variation.

While Applicants assert that the prior art fails to provide the requisite motivation necessary to make the combination as advanced by the Office, and that one with ordinary skill in the art would not enjoy reasonable expectation of success in making the proposed combination as proffered by the Office, it is Applicants' further position that its specification clearly and unequivocally provides data indicating the achievement of "results of an unexpected nature."

As set forth in Section 716.02(a) of the MPEP, "[e]vidence of a greater than expected result may also be shown by demonstrating an effect which is greater than the sum of each of the effects taken separately (i.e., demonstrating "synergism")", citing Merck & Co. Inc. v. Biocraft Laboratories Inc., 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), *cert. denied*, 493 US 975 (1989). Applicants have clearly demonstrated a synergism between the three claimed components of its stabilizer mixture. Stating on page 2 , lines 5-10 of its specification:

It has surprisingly been found that relatively small additions of α -tocopherol to known additive systems for polyethylene-based polymers, composed of a phenolic antioxidant and a phosphorus based secondary antioxidant, results in an unexpected synergistic effect.

The data set forth in the examples of Applicants' specification clearly denotes a synergistic effect of the tertiary combination of constituents compared to the binary combination of Bock et al. Indeed, in examples 1 and 2, the comparative data includes a composition derived from the Bock reference. (See page 14, CD-3 in Examples 1 and 2). As can be seen in all of Applicants' Examples, but in particular, in the results provided in Tables 3 and 4, the claimed tertiary component stabilizer system provides a synergistic effect which is beyond the combined additive effects of each of its components. The specification speaks to these unexpected results on page 16, lines 15-23, wherein it is stated:

The comparison of the results of CD-3 with those of I-1 on the one hand and the results of CD-4 with those of I-2 on the other hand clearly demonstrate that the obtained stabilization effect is not caused by an increase of the total concentration of phenolic antioxidant (AO-1 and ATP). It is believed that the stabilization performance of the stabilizer

compositions according to the invention, i.e. I-1 and I-2 in the aforementioned comparison, is achieved by a synergistic action of all three components of the stabilizer composition and, thus, cannot be regarded as purely additive, i.e. quantity depending effects. Since the effectiveness of the single components AO-1, PS-1 and ATP is well known in the prior art, it is surprising to find this particular synergy by triple-combinations according to the present invention.

In view of the above, it is Applicants' respectful position that it has put forth a compelling case of unexpected results that is sufficient to overcome the Office's *prima facie* case of obviousness of the claimed invention over Bock in view of Fukui. In consequence, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection.

As the total number of claims does not exceed the number of claims originally paid for, no fee is believed due. However if an additional fee is required, the Commissioner is hereby authorized to credit any overpayment or charge any fee deficiency to Deposit Account No. 03-2060.

In view of the forgoing amendments and remarks, the present Application is believed to be in condition for allowance, and reconsideration of it is requested. If the Examiner disagrees, she is requested to contact the attorney for Applicants at the telephone number provided below.

Respectfully submitted,



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